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agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception APP.

[71 FR 20883, Apr. 24, 2006, as amended at 71 FR 51717, Aug. 31, 2006; 71 FR 68439, Nov. 27, 2006]

§ 740.8 Key management infrastructure (KMI).

(a) *Scope.* License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) *Eligible commodities and software.*
(1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate “License Exception KMI” in block 9 on Form BIS-748P. Submit the original request to BIS in accordance with § 748.3 of the EAR and send a copy of the request to:

Attn: ENC Encryption Request Coordinator,
9800 Savage Road, Suite 6940, Fort Meade,
MD 20755-6000.

(c) *Eligible destinations.* License Exception KMI is available for all destinations, except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(d) *Reporting requirements.* (1) You must provide semiannual reports to BIS identifying:

(i) Ultimate consignee; specific end-user name and address, if available;

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and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than February 1 and no later than August 1 of any given year.

[61 FR 68579, Dec. 30, 1996, as amended at 63 FR 50520, Sept. 22, 1998; 63 FR 72159, Dec. 31, 1998; 65 FR 2496, Jan. 14, 2000; 66 FR 42109, Aug. 10, 2001; 70 FR 22249, Apr. 29, 2005]

§ 740.9 Temporary imports, exports, and reexports (TMP).

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports—*

(1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BIS.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use in a lawful enterprise or undertaking of the exporter. The transaction must meet the requirements of paragraph (a)(2)(i)(A) or paragraph (a)(2)(i)(B) of this section. Exports of items controlled under ECCN 5D992 are permitted pursuant to this section. For other exports under this License Exception of laptops, handheld devices and other computers and equipment

loaded with encryption commodities or software, including items controlled for NS and EI reasons, refer to note 2 to Category 5, Part 2 of Supplement No. 1 to Part 774.

(A) *Destinations other than Country Group E:2 or Sudan.* Exports and reexports of tools of trade for use by the exporter or employees of the exporter may be made to destinations other than Country Group E:2 or Sudan. The tools of trade must remain under the “effective control” (see § 772.1 of the EAR) of the exporter or the exporter’s employee. Eligible tools of trade may include, but are not limited to, equipment and software as is necessary to commission or service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual’s departure from the United States, or at any time after departure.

(B) *Sudan.* Exports, but not reexports, of tools of trade may be made to Sudan by: A non-governmental organization engaged in activities to relieve human suffering in Sudan and registered by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521; or by an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538); or by staff or employees of either such type of organization. The tools of trade must remain under the “effective control” (see § 772.1 of the EAR) of the exporter or its employee or staff. The tools of trade must be used in activities to relieve human suffering and, when exported, must accompany (either hand carried or as checked baggage) a member of the staff or an employee of such an organization to Sudan. In this paragraph (a)(2)(i)(B), the term “staff” means a person traveling to Sudan, at the direction of, or with the knowledge of an organization registered pursuant to 31 CFR 538.521 or

an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538), to assist in the work of such organization in Sudan even if such person is not an employee of such organization. The only tools of trade that may be exported to Sudan under this paragraph (a)(2)(i) are:

(1) Personal computers (including laptops) controlled under ECCN 4A994 that do not exceed Adjusted Peak Performance (APP) of 0.0015 Weighted TeraFLOPS (WT) and “software” controlled under ECCNs 4D994 or 5D992 that is for the “use” of such computers and that was loaded onto such computers prior to export and remains loaded on such computers while in Sudan;

(2) Telecommunications equipment controlled under ECCN 5A991 and “software” controlled under ECCN 5D992 that is for the “use” of such equipment and that was loaded onto that equipment prior to export and that remains loaded on such equipment while in Sudan;

(3) Global positioning system (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(4) Parts and components that are controlled under ECCN 5A992, that are installed with, or contained in, computers or telecommunications equipment listed in paragraphs (a)(2)(i)(B)(1) and (2) of this section and that remain installed with or contained in such computers or equipment while in Sudan.

(ii) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

(B) The kits remain under effective control of the exporter or an employee of the exporter; and

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception

RPL and the defective parts returned (see “parts”, § 740.10(a) of this part).

(iii) *Exhibition and demonstration.* You may export or reexport under this provision commodities and software for exhibition or demonstration in all countries except countries listed in Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter’s designated sales representative retains “effective control” over the commodities and software while they are abroad (see part 772 of the EAR for a definition of “effective control”). The commodities and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(iv) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad may be exported or reexported to all destinations under this section, except Country Group E:2, Sudan or Syria.

(v) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this “containers” provision does not authorize the export of the container’s contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) *Broadcast material.* (A) Video tape containing program material recorded

in the country of export to be publicly broadcast in another country.

(B) Blank video tape (raw stock) for use in recording program material abroad.

(vii) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico’s in-bond industrialization program (Maquiladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) *News media.* (A) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany “accredited” news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2, or Sudan (see Supplement No. 1 to part 740) if the commodities:

(1) Are retained under “effective control” of the exporting news gathering firm;

(2) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), news media, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(3) Are removed with the news media personnel at the end of the trip.

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, Room H4616, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that the temporary exports and reexports provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes

that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), tools of trade, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), tools of trade and (a)(2)(viii), news media, of this section do not preclude independent “accredited” contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B.* (A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (see Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without prior authorization by BIS.

(B) For purposes of this paragraph (a)(2)(ix), U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States).

(3) *Special restrictions.* (i) *Destinations.* (A) No commodity or software may be exported or reexported under paragraph (a) of this section to Country Group E:2 (see Supplement No. 1 to this part) except as permitted by paragraph

(a)(2)(viii) of this section (news media). These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under the ownership, control, lease, or charter by any country in Country Group E:2, or any national thereof.

(B) No commodity or software may be exported to Country Group D:1 (see Supplement No. 1 to part 740) except:

(1) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(2) Commodities and software exported under paragraph (a)(2)(i), *tools of trade*, of this section;

(3) Commodities exported or reexported as *kits consisting of replacement parts*, consistent with the requirements of paragraph (a)(2)(ii) of this section; and

(4) Commodities and software exported or reexported for exhibition and demonstration in accordance with the requirements of paragraph (a)(2)(iii) of this section.

(C) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) *Ineligible commodities or software.* Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly in any sensitive nuclear activity as described in § 744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(iii) *Use or disposition.* No commodity or software may be exported or reexported under this paragraph (a) if:

(A) An order to acquire the commodity or software has been received before shipment;

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms described in this paragraph (a); or

(C) The commodity or software is for lease or rental abroad.

(4) *Return or disposal of commodities and software.* All commodities and software exported or reexported under

these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license application to BIS at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BIS will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BIS-748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BIS approves the extension request, the exporter will re-

ceive authorization for a one-time extension not to exceed six months. BIS normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) *Reexports.* Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination other than Sudan or Country Group E:2 under provisions of this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

(b) *Exports of items temporarily in the United States: Scope.* The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

NOTE 1 TO PARAGRAPH (b) OF THIS SECTION: A commodity withdrawn from a bonded warehouse in the United States under a “withdrawal for export” customs entry is considered as “moving in transit”. It is not considered as “moving in transit” if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 TO PARAGRAPH (b) OF THIS SECTION: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.)

(1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of paragraph (b)(1) of this section authorize export of items moving in transit through the United States under a Transportation and Exportation (T. & E.) customs

entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security reasons, nuclear nonproliferation reasons, chemical and biological weapons reasons or missile technology reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 or Sudan under this section.

(iii) The following may not be exported in transit from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS-645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of paragraph (b)(1) apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B-13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than \$50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or other applicable U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B-13, as on Commerce Form 7513, or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B-13 authorizing the shipment is required.

(2) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an ex-

hibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:2 or Sudan (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security reasons, nuclear nonproliferation reasons, chemical and biological weapons reasons or missile technology reasons, respectively.

(3) *Return of unwanted shipments.* A foreign-origin item may be returned to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) *Exports of beta test software—(1) Scope.* The provisions of this paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) *Eligible countries.* Encryption software controlled under ECCN 5D002

is not eligible for export or reexport to a country in Country Group E:1 under the provisions of this paragraph (c). All other beta test software is eligible for export or reexport to all destinations, except Cuba, Iran, and Sudan under the provisions of this paragraph (c).

(3) *Eligible software.* All software that is controlled by the Commerce Control List (Supplement No.1 to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph (c). Encryption software controlled for “EI” reasons under ECCN 5D002 is eligible for export and reexport under this paragraph (c), provided that the exporter has submitted the information described in paragraph (c)(8) of this section by the time of export. Final encryption products produced by the testing consignee are subject to any applicable provisions in § 742.15(b)(2) of the EAR (for mass market encryption commodities and software with symmetric key length exceeding 64-bits) or § 740.17 of the EAR (License Exception ENC), including review and reporting requirements.

(4) *Conditions for use.* Exports or reexports of beta test software programs under the provisions of this paragraph (c) must meet all of the following conditions:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note (see Supplement 2 to part 774 of the EAR) or the Cryptography Note in Category 5, Part 2 (“Information Security”) of the Commerce Control List (see Supplement No.1 to part 774 of the EAR);

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to exporting or reexporting any eligible software under this paragraph (c), the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a

contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

“We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sub-licensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.”

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any beta test software that was exported or re-exported to them under the provisions of this paragraph (c).

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee’s role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

(8) *Notification of beta test encryption software.* For beta test encryption software eligible under this license exception you must, by the time of export or reexport, submit the information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR by e-mail to BIS at crypt@bis.doc.gov and to the ENC Encryption Request Coordinator at enc@nsa.gov.

[61 FR 64277, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25457, May 9, 1997; 63 FR 50521, Sept. 22, 1998; 65 FR 38150, June 19, 2000; 65 FR 42568, July 10, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42109, Aug. 10, 2001; 67 FR 38861, June 6, 2002; 68 FR 35784, June 17, 2003; 69 FR 5690, Feb. 6, 2004; 69 FR 23628, Apr. 29, 2004; 69 FR 46075, July 30, 2004; 69 FR 71359, Dec. 9, 2004; 70 FR 8249, 8252, Feb. 18, 2005; 70 FR 9703, Feb. 28, 2005; 70 FR 14390, Mar. 22, 2005; 71 FR 14098, Mar. 21, 2006; 71 FR 20885, Apr. 24, 2006]